

Internal Revenue Service

Department of the Treasury

District  
Director

1100 Commerce St., Dallas, Texas 75242

Date: DEC 20 1996

Employer ID Number: [REDACTED]

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply To: [REDACTED]

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

You were incorporated on [REDACTED] under the General Corporation Law of [REDACTED]. Your original Articles of Incorporation stated that the nature of the business and the objects and purposes to be transacted, promoted and carried on, are to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of [REDACTED]. On [REDACTED] your Articles were amended to state you are organized for exclusively charitable, religious, educational and scientific purposes.

Your organization is a new organization founded on the principal of creating greater awareness of recent developments in health care for the [REDACTED] through education and teaching. Primarily focused on preventive medicine, the associations goal is to educate its members of both the medical and alternative medical treatments available today.

Your planned activities include the following:

- \* Publish, print and distribute a newsletter three times a year. Increase publication to quarterly format as funds become available.
- \* Inform the public through the newsletter of recent developments in prostate health care from the medical community as well as the alternative medicine community.
- \* Keep military veterans of [REDACTED] informed about [REDACTED] its registry, and its relationship to [REDACTED]
- \* sell [REDACTED] specific products, ie, books, magazines, vitamins, herbal extracts, and other related products as they become known or available, at a reduced cost to its membership.
- \* Provide an unbiased and equal forum regarding developments in the medical community, as well as provide information on the use of [REDACTED] or natural medicines from the alternative medicine community.

You state that the [redacted] vitamins and hertal extracts that are recommended by the [redacted] are available to the public, but not in the correct dosage to be effective in [redacted] nor is the public informed about the recommended dosages and products that produce results. [redacted] minerals can only be purchased by joining a distributorship. Your organization became a member of such a distributorship so you could sell to the public. You stated that, besides yourselves, there are only a few companies that sell the extract in it's recommended dosage in the United States.

Your application states that your sources of financial support will consist of membership dues, yearly dues, and product sales. The financial information submitted with your application reflects that over half of your income will be from product sales.

Section 501(c)(3) of the Code provides exemption for:  
 "Corporations...organized and operated exclusively for religious, charitable,...or educational purposes...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its Articles of Organization -

- "(A) Limit the purposes of such organization to one or more exempt purposes; and
- (B) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

Section 1.501(c)(3)-1(c)(1) of the Income Tax Regulations provides that:  
 "An organization will be regarded as 'operated exclusively for one or more exempt purposes only' if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)..."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public rather than a private interest.

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:  
 "(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section."

"(c)(1) Primary activities. An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An



organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that all the organizations there described must serve a public purpose rather than a private interest, as follows:

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests."

One of the most important issues involved in determining the exempt status of an organization under Internal Revenue Code section 501(c)(3) is whether the operation of the organization serves the private interests of those in control.

Even a small amount of private inurement is fatal to exemption. In Spokane Motorcycle Club v. U.S., 222 F. Supp. 151 (E.D. Wash. 1963), net profits were found to inure to private individuals where refreshments, goods and services amounting to \$825 (representing some 8% of gross revenues) were furnished to members.

In Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945) the Court held that a better business bureau was not exclusively educational or charitable. Its activities were in part aimed at promoting the prosperity and standing of the business community, even though there was also benefit to the public. The Court stated that in order to fall within the claimed exemption, an organization must be devoted to exempt purposes exclusively. The presence of a single nonexempt purpose, if substantial in nature, will destroy exemption regardless of the number or importance of truly exempt purposes. According to Revenue Ruling 74-553, 1974-2 C.B. 168, this rationale applies equally well to any category of charitable purposes under section 501(c)(3) of the Code.

In Federation Pharmacy Services, Inc. v. Commissioner, 72 T.C. 687 (1979), in which the appellate court held that a pharmaceutical service operated by a nonprofit organization was not exempt as a charitable organization because it was operated for a substantial commercial purpose. The service was organized to provide the general public with pharmacy services, and it provided special discount rates for handicapped and senior citizens in its area. The service was not committed to providing any drugs below cost or free to indigent persons and therefore, although its services did improve health in the area, it was primarily a commercial venture operated in competition with other area pharmacies.

Your activities appear to be similar to the court cases mentioned above. In Federation Pharmacy, the primary activity was in direct competition with profit making drugstores and was operated for a substantial commercial purpose. Your sales of vitamins, herbal extracts and other related products, as a wholesale distributor of drugs, supplies, vitamins, minerals and medical equipment, are similar to the Federation Pharmacy Services and are in direct

competition to your commercial counterparts.

In Better Business Bureau it was stated that the presence of a single non exempt purpose, if substantial in nature, will destroy exemption regardless of the number of truly exempt purposes. Your sales of drugs to members is a non-exempt purpose, and are more than an insubstantial part of your activities.

Based on the activities and operations shown in your application the organization does not qualify under section 501(c)(3) of the Internal Revenue Code. You are carrying on a business of a kind ordinarily carried on for profit, and your activities are not limited to exclusively educational or charitable purposes. Accordingly, you are not entitled to exemption, and you are required to file Federal income tax returns on Form 1120.

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,



Bobby E. Scott  
District Director

Enclosures:  
Publication 892  
Form 6018



Form 6018  
(Rev. August 1983)

Department of the Treasury-Internal Revenue Service  
**Consent to Proposed Adverse Action**  
(All references are to the Internal Revenue Code)

Prepare in  
Duplicate

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name

RECEIVED  
JAN 06 1997  
DAL...  
EP/EO Division  
Washington, DCO

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption IRC 501(c)(3)
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)( ) to 501(c)( ), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)( ), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)( ), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization

Signature and Title

Date

Date

Form 6018 (Rev. 8-8-94)